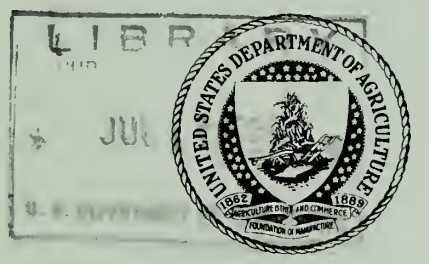
SUMMARY of COOPERATIVE CASES



FARMER COOPERATIVE SERVICE
U. S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

LEGAL SERIES NO 5 JUNE 1958

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMER COOPERATIVE SERVICE
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SUMMARY OF COOPERATIVE CASES

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The comments on cases reviewed herein represent the personal opinion of the author and not necessarily the official views of the Department of Agriculture.

DENVER UNION STOCK YARD REGULATIONS HELD INVALID ON FACE.

(Denver Union Stock Yard Co. v. Producers Livestock Marketing Association, and Benson v. Producers Livestock Marketing Association, 356 U.S. 282 (1958)).

The Supreme Court of the United States entered its judgment on April 29, 1958, in the cited case, affirming the decision of the Tenth Circuit Courts of Appeals with respect to certain regulations issued by the Denver Union Stock Yard Company. (See Summary L. S. No. 1, p. 7). In brief, the regulations prohibited market agencies or dealers at the Denver stockyard from soliciting business for other markets or diverting or interfering with the normal flow of livestock to the Denver market. The Court concluded that the regulations issued by the stockyard owner prevented a market agency from performing the duty imposed on it by the Packers and Stockyard Act "to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard." Accordingly, it agreed with the circuit court that the regulations were invalid on their face.

The majority opinion in the Supreme Court was written by Mr. Justice Douglas, and a concurring opinion was written by Mr. Justice Clark. A dissenting opinion was written by Mr. Justice Whittaker and concurred in by Mr. Justice Frankfurter and Mr. Justice Harlan. In addition, a dissenting opinion was written by Mr. Justice Franfurter and concurred in by Mr. Justice Harlan.

The following excerpt from the Court's opinion sets forth the reasons for the majority view:

> "The critical statutory words in the present case are from §304 providing, 'It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard.' The Secretary's emphasis in the argument was on the words 'reasonable stockyard services.' By analogy to the antitrust cases, a case is built for fact findings essential to a determination of what is 'reasonable.' See Standard Oil Co. v. United States, 221 U. S. 1; Chicago Board of Trade v. United States, supra. Certainly an evidentiary hearing would be

necessary if, for example, a method of handling livestock at a particular stockyard was challenged as unreasonable. See Morgan v. United States, 298 U.S. 468; Morgan v. United States 304 U.S. 1; United States v. Morgan, 307 U.S..183. But that argument is misapplied here. It misconceives the thrust of the present Regulations, which are aimed at keeping market agencies registered at Denver from doing business for producers, who are in the 'normal marketing area' of the Denver yard, at any other market. These Regulations bar them from rendering not some stockyard services at the other yards but any and all other stockyard services for those producers, except at Denver. No stockyard services cannot possibly be equated with 'reasonable' stockyard services under this Act.

"The argument contra is premised on the theory that stockyard owners, like feudal barons of old, can divide up the country, set the bounds of their domain, establish no trespassing signs, and make market agencies registering with them their exclusive agents. The institution of the exclusive agency is, of course, well known in the law; and the legal problem here would be quite different if the Act envisaged stockyards as strictly private enterprise. But, as noted, Congress planned differently. The Senate Report proclaimed that these 'great public markets' are 'public utilities.' S. Rep. No. 39, 67th Cong. 1st Sess. 7. The House Report, in the same vein, placed this regulation of the stockyards on a par with the regulation of the railroads. H. R. Rep. No. 77, 67th Cong., 1st Sess. 10. It was against this background that Chief Justice Taft wrote in Stafford v. Wallace, supra.at 514:

> 'The object to be secured by the Act is the free and unburdened flow of live stock from the ranges and farms of the West and the South-West through the great stockyards and slaughtering centers on the borders of that region and hence in the form of meat products to the consuming cities of the country in the Middle West and East or still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.'

He went on to say that the Act treats the stockyards "as great national public utilities," id.,at 516. His opinion echoes and re-echoes with the fear of monopoly in this field.

We are told, however, that the economics of the business has changed, that while at the passage of the Act most livestock purchases were at these stockyards, now a substantial portion -- about 40 percent, it is said -- take place at private livestock markets such as feed yards and country points. From this it is argued that the present Regulation is needed to keep the business in the public markets, where there is regulation and competition, and out of the private markets where there is no competitive bidding and regulation. If the Act does not fit the present economics of the business, a problem is presented for the Congress. Though our preference were for monopoly and against competition, we should 'guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy.' Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 194.

We take the Act. as written. As written, it is aimed at all monoply practices, of which discrimination is one. When Chief Justice Taft wrote of the aim of the Act in terms of the ends of a monopoly, he wrote faithfully to the legislative history. The Senate Report, supra. at 7, stated,"It has been demonstrated beyond question that the history of the development of this industry has been the history of one effort after another to set up monopoly." The present Regulations, it seems, have had a long ancestry."

FTC COMPLAINT AGAINST TOMATO PROCESSORS ORDERED DISMISSED WITHOUT PREJUDICE

(Stokely - Van Camp, Inc., v. Federal Trade Commission, 246 Fed. 2d 458 (1957)).

In this case, the Federal Trade Commission was sustained in its findings, (1) that certain vegetable processors (petitioners in the case) had, beginning in the spring of 1951 and continuing through the remainder of the tomato contracting and harvesting season of that year, performed certain acts and practices pursuant to a common understanding and planned common course of action (a) to refuse to negotiate or deal with a cooperative marketing association, Cannery Growers, Inc., as a bargaining agent for its grower-members, and (b) to refuse to grant recognition of or to negotiate with the co-op by deducting the dues check-off for grower-members of that organization and (2) that

such conduct constituted an unreasonable restraint of trade and unfair method of competition under the Federal Trade Commission Act. However, the Court of Appeals held that the Federal Trade Commission was not justified in issuing a cease and desist order simply because the processors insisted that their course of conduct did not violate the law and had filed no affidavit indicating a clear intention to refrain from the condemned practices, where the clear evidence showed that the processors had, during the four years between termination of the conspiracy and entry of the cease and desist order, refrained from engaging in the condemned practice.

As explained in the Commission's decision which was appealed from:

> "For many years prior to 1951, it has been their [the processors'] practice to enter into contracts with individual tomato growers for the planting and subsequent delivery of specified acreages of tomatoes. The contracting usually begins in February and is concluded in the early part of May. Prior to 1951, contracts were prepared by the individual respondents and usually covered such matters as prices to be paid for delivered tomatoes according to grade, number of acres to be planted, a requirement that the individual grower would sell to that particular respondent all tomatoes grown by him that year, etc. The contracts were not the result of individual negotiations. Each respondent at the proper time announced the price and general terms on which it would contract. The individual grower was free to contract with the canner of his choice, although geographic considerations put some limitations on this freedom. Canners also at times made purchases during the canning season on a 'spot' or 'open market' basis.
>
> "Dissatisfaction on the part of some growers with the prices paid by the canners and also with the grading program led to the organization in 1949 of a cooperative known as Cannery Growers, Inc. The general purpose of this cooperative was to act as the bargaining agent or representative of the growers in the negotiation of tomato contracts with the canners. Many growers became members and signed contracts appointing the cooperative as the bargaining agent and providing that the contract would not become effective until the Co-op had contracted with 65% of the growers in the Ohio tomato area."

After extensive investigations and hearings, the hearing examiner issued two initial decisions, the second of which is being appealed in part in this case. In this second initial decision, the hearing examiner held -- "that the acts and practices of respondents beginning in the spring of 1951 and continuing through the remainder of the tomato season of that

year were performed pursuant to a common understanding and planned course of action (a) to refuse to negotiate or deal with the Co-op as a bargaining agent for its grower members, and (b) to refuse to grant recognition of, or to negotiate with, the Co-op by deducting the dues check-off for grower-members of that organization." However, he dismissed the complaint without prejudice saying that "it is believed that the Commission would be justified in assuming from the facts disclosed that the respondents will not again attempt to engage in these acts and practices in this industry and therefore it would not be in the public interest for the Commission to issue an order to cease and desist at this time".

The Commission, on appeal from the second initial decision, held that the record fully supported the hearing examiner's findings as to the existence in 1951 of an agreement to boycott the co-op. But it held that it would not be justified in assuming that the boycott would not be renewed and that the public interest required the prevention of such renewal by issuing an order. On June 29, 1956, such an order was issued, directing that petitioners cease and desist from entering into, continuing, co-operating in, or carrying out any planned course of action, understanding, agreement, combination or conspiracy, to do or perform any of the following acts or things:

> (a) Refusing to grant recognition of or to negotiate or deal with Cannery Growers, Inc., an association of tomato growers, as a bargaining agent for its grower members;
>
> (b) Refusing to purchase or to contract to purchase tomatoes from growers who are members of Cannery Growers, Inc.

On the appeal, the petitioners conceded in their brief that a "common agreement to refuse to negotiate with or recognize a cooperative would obviously have constituted illegal conduct under the act." They contended, however, that there was no direct evidence of a conspiracy; that their conduct did not in fact constitute a conspiracy in violation of the act; and that in any event they had during the four years following 1951 been bargaining with the cooperative. The Court, after summarizing the processors' argument, commented as follows on the Commission's ruling:

> "The Commission adopted in toto the hearing examiner's findings. The only announced basis for its reversal of his conclusion that a cease and desist order would not be in the public interest is contained in a single paragraph. It follows:

> "In the present case, it is clear that respondents did cease the practices complained of prior to the issuance of the complaint and have not renewed them. Nevertheless, they have at all times insisted that their course of conduct did not violate the law. No affidavits or statements appear in the record indicating a clear intention to refrain from the practices found to exist. The fact that the Co-op now occupies a strong position in the industry as a bargaining agent is a circumstance to be considered, but we do not consider it sufficient. No criticism is to be made against respondents for vigorously defending the position they had taken. This, of course, they had a right to do. Our conclusion simply is that the facts in this particular case do not warrant a dismissal without prejudice; on the other hand, we think an order based on the findings should be issued."

The Commission contends that its action was proper. It relies upon what we said in Marlene's Inc. v. Federal Trade Commission, 216 F. 2d 556, 559:

> " That discontinuance of an unlawful practice, of itself does not necessarily preclude the issuance of a cease and desist order is so well settled as to preclude further argument."

and

> " * * * 'the Commission has broad discretion to determine whether such an order is needed to prevent resumption' of the unlawful practice."

We added the following language not quoted by the Commission:

> " * * * This discretion must be confined, however, within the bounds of reasonableness."

Whether or not the discretion granted to the Commission is broad enough to sustain the cease and desist order in this case requires us to consider not only the facts appearing in the record, upon which the hearing examiner based his conclusion that the entry of a cease and desist order would not be in the public interest, but the facts stated by the Commission which it considered sufficient to justify such order.

If we consider only the hearing examiner's statement of the facts upon which his conclusion rested, and the actual findings of fact 166, 167, and 168, supra. which were adopted by the Commission, we see no reason for the issuance of a cease and desist order.

We must, however, consider the reasons given by the Commission for ruling otherwise. It alludes to only four facts. Incidentally, none of those facts is disputed in this case. They are (1) respondents did cease the practices complained of prior to the issuance of the complaint and have not renewed them, (2) they have at all times insisted that their course of conduct did not violate the law, (3) no affidavits or statements appear in the record indicating a clear intention to refrain from the practices found to exist, and (4) the co-op now occupies a strong position in the industry as a bargaining agent.

We are unable to see how fact (1) calls for a cease and desist order. Unless persuasive reasons to the contrary appear, this fact calls for a rejection of such an order. Fact (2) is irrelevant. Itsirrelevancy is emphasized by the Commission's apologetic statement that no criticism is to be made against respondents (petitioners here)for vigorously defending the position they had taken, which, of course, they had a right to do. It does not follow, however, that one who defends charges before the Commission is, on that account, to be subjected in the future to a cease and desist order because his defense there proves unsuccessful. That would be a policy abhorent to our sense of justice.

As to fact (3), it may be admitted arguendo that no affidavits or statements appear in this record showing a clear intention by the petitioners to refrain from the practices found to exist. However, there are no affidavits or statements to the contrary. The actual absence of such practices by petitioners, during a period of four years between the termination of the conspiracy in 1951 and the entry of the cease and desist order in 1956, weighs heavily in support of a conclusion that, after the tomato growing season of 1951 ended, there has been no intention on the part of petitioners to again engage in those practices.

As to fact (4), while recognizing the strong position of the co-op as a bargaining agent in the industry, the Commission lightly brushes that fact aside because it does "not consider it sufficient." Why, it does not explain. That statement, without any indication of a fact to support it, expresses no adequate basis for a proper exercise of discretion. Dogmatically, the Commission then abruptly states that

its conclusion 'simply is that the facts in this particular case do not warrant a dismissal without prejudice; on the other hand, we think that an order based on the findings should be issued.' Its language boils down to this: 'It is so simply because we say it is so.'

We think that the hearing examiner was right and that the Commission was wrong in entering the cease and desist order. It should have dismissed the complaint, without prejudice."

JOINT SALES AGENCIES AND THE ANTITRUST LAWS

(In the matter of Virginia Excelsior Mills, Inc., FTC Docket 6630)

There has been considerable speculation recently as to whether one or more farmer cooperatives in the processing business might be able under appropriate circumstances to establish a joint sales agency with other non-cooperative processors of the same agricultural commodity. The hope that such an arrangement might find sanction under the Appalachian Coals case (Appalachian Coals, Inc., v. United States, 288 U.S. 344 (1933)), would be rather effectively scuttled if the decision of the Federal Trade Commission in the case cited above should be sustained on review.

In this case Virginia Excelsior Mills and 12 other excelsior manufacturers entered into a joint exclusive sales agency arrangement under which they fixed prices for their products according to grade, allocated customers, and limited individual sales and production. The agency operation, based on identical contracts with each manufacturer in the Northern Virginia section, follows substantially the plan approved in the Appalachian Coals case. The opinion of the Federal Trade Commission distinguishes the case from the excelsior situation, however, and holds that the better expressions of the law "with reference to actual price fixing is more accurately stated in cases such as U.S. vs. Socony-Vacuum Oil Co., 310 U.S. 150, and U.S. vs. Trenton Potteries, 273 U.S. 392."

"The law," Chairman Gwynne said, "now seems well settled that, while in many activities, the planned common course of action of members of an industry will be subjected to the test of reasonableness, nevertheless, agreements to fix prices are unlawful per se. No showing of competitive abuses or evils which the price fixing plan is designed to remove may be set up as a defense."

In further reference to the Appalachian case, the opinion says: "Some of the language in this case is difficult to reconcile with previous and subsequent cases. Nevertheless, the actual decision is a somewhat narrow one. The Supreme Court (with one Justice dissenting) reversed the decision of the lower court which had issued an injunction restraining the putting into operation of a plan for concerted action which the Government claimed would violate the Sherman Act. There were many unusual circumstances in the case. Due principally to the depression, many factors were at work which were bringing chaos into the coal industry. It should be noted, too, that the Supreme Court directed that the lower court should retain jurisdiction of the cause and might set aside the decree and take further proceedings if future developments justified that course in appropriate enforcement of the antitrust act."

A petition for review of the Commission's decision has been filed and is now pending before the Fourth Circuit Court of Appeals.

INTERFERENCE WITH MARKETING CONTRACTS - INJUNCTION - RIGHTS OF HANDLERS

(Akron Milk Producers, Inc., v. Lawson Milk Company, 147 NE 2d 512 (1958)).

In this case, a cooperative sought to enjoin a milk company from attempting to induce its producer members to terminate their marketing agreements with the association and from refusing to purchase milk from producer members of the association.

The Court found that the milk company had attempted to get producers to breach their contracts with the cooperative and that this was unjustifiable conduct. Accordingly, it held that the milk company should be enjoined from such activities. However, it further found that, although the milk company had attempted to induce and persuade member producers to legally terminate their contracts, this type of conduct was within the milk company's rights. Finally, it was held that the milk company had the right to discontinue doing business with the association or association member-producers where there was no prior governing contract between the milk company and the association or such producers. The Court said it was aware that "under the Federal and State laws Agricultural Cooperatives such as the Plaintiff Association are

favored entities, however excepting for a few exceptions, these bodies or organizations are amenable to the same general laws as are individuals and corporations."

It explained that although it had "always favored Unions and Co-operative Associations as necessary adjuncts for the raise in the standard of living of the working man and farmer" it considered that "at the same time that favoritism cannot supersede or be paramount to the Court's duty in preserving and protecting the legal rights of others." The opinion states further:

> "As I have indicated, I am not pronouncing the thought that Lawson can encourage, or in any way attempt to get producer members to breach their contract with the Association, but in the spirit of business competition Lawson's representatives may argue their advantages and persuade producers to enter into contracts with them, orally or otherwise, and to encourage the producers to legitimately terminate their contracts with the Association or any other group.
>
> "No injunction will be granted prohibiting Lawson from engaging in, authorizing, encouraging, or approving any conduct designed to induce, or attempting to induce any producer members of the Association to terminate their marketing contract with the Association."

Concerning the third prayer of the cooperative's petition, which asks that the milk company be enjoined from "engaging in, authorizing, encouraging, or approving any refusal to purchase milk produced by producer members of Plaintiff Association for the reason that such producers are members of the Plaintiff Association," the Court said in summation:

> "The Court finds that Lawson cut off producer members only because by contract the Association guaranteed them a market for the sale of their milk without loss to them, whereas the independent producers had no such guarantee; that Lawson was in fear that the Association would soon be in a position to force Lawson to pay more for milk or cut off its supply and force it to go to distant places for an adequate supply, or go out of business. What further evidence of justification is necessary, if there must be justification? In competitive markets business concerns have the right generally to select the parties with whom they wish to transact business and these concerns may discontinue that business at any time they wish as long as there is no governing contract."

The concluding paragraphs of the Court's opinion read as follows:

"It is therefore the opinion of this Court that:

1. Under the law the Association is a legal entity favored by law only to the extent that if the organization is established under and in conformity to the governing laws 1729.01 Revised Code - 1729.28 Revised Code inclusive, then the law declares that an Association is not a conspiracy, a combination in restraint, an illegal monopoly or an attempt to lessen competition or to fix prices arbitrarily but aside from this favoritism the Association is governed by General Corporation Law. (See 1729.27 Revised Code.)

2. That there was some evidence that Lawson attempted to getssome producer members to breach their contract with the Association so that insofar as this practice is concerned injunctive relief will apply as prayed for.

3. That the Court is of the opinion that Lawson may have the right in the spirit of competition and furtherance of business to persuade or indulge producer members to legally terminate their contract with the Association.

4. That there is no evidence to warrant an injunction against the haulers and others for acts as were set forth in the prayer of the petition which was referred to herein as Part 2.

5. That Lawson has the right to discontinue business with the Association or Association member producers under the circumstances as were found existing."

SALE OF FEED-BREACH OF WARRANTY - RECOVERY BY DAMAGED PRODUCER.

(Farmers Grain Cooperative v. Frederickson, 321 Pac.2d 926 (1958)).

A grain cooperative sought to foreclose on a note and mortgage executed by a turkey grower to secure advances of feed. The grower counterclaimed for breach of contract and negligence with respect to the nutritional deficiency of the feed which he had purchased from the cooperative. The lower court rendered a judgment on his counterclaim and the cooperative appealed. The cooperative assigned as error two points:

1. Insufficiency of the evidence to justify the inference that the feed was deficient and that such deficiency proximately caused the defendant's damage, and,

2. That the Court should not have permitted the defendant to inquire about insurance carried by the plaintiff against losses of the kind suffered by the defendant.

On appeal, the Supreme Court held that the evidence was sufficient to justify inference that the feed was deficient and that such deficiency caused the grower's damage. It further held that there was no reversible error committed by reference to the insurance coverage. Part of the evidence of the plaintiff showed that this insurance was carried, and furthermore, the trial court instructed the jury that it should not consider whether or not there was insurance, since no insurance companies were parties to the action.

TRANSPORTATION TAX ON PROPERTY - MILK HAULED BY PROCESSOR IN ITS TRUCKS FROM PRODUCERS' FARMS

(Rev.Rul. 58-150; I.R.B. 1958-14, p.19).

According to the cited ruling the tax on the transportation of property imposed by section 4271 of the Internal Revenue Code of 1954, does not apply to amounts charged to milk producers by a milk processing company for hauling milk, in trucks which it owns and operates, from the producers' farms to its processing plant.

The ruling reads as follows:

"The Internal Revenue Service has been asked whether the tax on the transportation of property applies to amounts charged to milk producers by a milk processing company for hauling milk from the producers' farms to its processing plant.

"A company is engaged in the manufacture and sale of dairy products. In connection with the manufacturing of its products, the company purchases milk from producers and hauls the milk, in trucks which it owns and operates, from the various farms to its own plant for processing. Upon arrival at the company's plant, the milk is weighed and tested. If the milk meets certain prescribed standards,

the company accepts the milk and credits the farmer's account. A charge for hauling the milk is computed on the basis of the rate per hundred-weight applicable to milk hauled in that particular area and such charge is deducted from the gross amount due the producer for milk purchased during each month.

"Section 4271 of the Internal Revenue Code of 1954 imposes a tax upon the amount paid for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another. Section 4272(a) of the Code provides that the tax applies only to amounts paid to a person engaged in the business of transporting property for hire. The tax is payable by the person making the taxable transportation payment and is collectible by the person receiving such payment.

"Section 143.1(b) of Regulations 113, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954-2, 47, defines the term 'persons engaged in the business of transporting property for hire' to include a common carrier, contract carrier, local moving or drayage concern, freight forwarder, express company or any other person transporting property for hire wholly or in part by rail, motor vehicle, water or air.

"In the instant case, it is held that since the milk processing company purchases milk from producers and hauls the milk to its own plant in trucks which it owns and operates, and the milk is necessary to the conduct of the processing company's business, such hauling is merely incidental to the company's processing business. Accordingly, the processing company is not considered to be a "person engaged in the business of transporting property for hire" within the meaning of section 4272(a) of the Code with respect to such hauling. Therefore, the tax on the transportation of property is not applicable to the amounts charged by the processing company to the farmers for such hauling services. See Revenue Ruling 55-752, C..B. 1955-2, 466, which relates to the trucking by a cooperative association of its members' produce to its general retail store."

TRANSPORTATION TAX ON PROPERTY - WHAT CONSTITUTES "ENGAGING IN THE BUSINESS OF"

(Rev.Rul. 58-157; I.R.B. 1958-15, p.15.)

The Service has held that for purposes of the tax on transportation of property, a person who transports property for others as a regular practice and makes a charge therefor is considered to be engaged in the business of transporting property for hire, even though such business may not constitute his principal means of livelihood.

The complete ruling is as follows:

> "Advice has been requested whether the tax on the transportation of property applies to amounts paid to a person for transporting property, even though such hauling does not constitute his principal business or means of livelihood.
>
> "Illustratively, a publishing firm contracts with individuals, who have other means of livelihood, to transport newpapers from its plant to adjoining towns. Those individuals transport the newspapers daily in their own personal automobiles. Similarly, a farmer hauls milk for his neighbors to a creamery as a regular practice and makes a charge therefor.
>
> "Section 4271(a) of the Internal Revenue Code of 1954 imposes a tax on the amount paid within or without the United States for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another. Section 4272(a) of the Code provides, in part, that the tax imposed on the transportation of property shall apply only to amounts paid to a person engaged in the business of transporting property for hire.
>
> "It is held that if a person transports property for others as a regular practice and makes a charge therefor, he is considered to be engaged in the business of transporting property for hire even though such business may not constitute his principal business or means of livelihood. Accordingly, the tax on the transportation imposed by section 4271(a) of the Code properly applies to the amounts paid for transporting property in each of the examples mentioned above."

TRANSPORTATION TAX ON PROPERTY - DRAYAGE BY COTTON WAREHOUSES.

(Rev. Rul. 58-205; I. R. B. 1958-18, p. 26.)

The Internal Revenue finds that if, under a reciprocal agreement between cotton warehouses, a warehouse receives carloads of "mixed cotton" and drays that portion of the cotton consigned to other warehouses to the receiving warehouses, such warehouse is, to the extent that it performs draying services for other warehouses, "a person engaged in the business of transporting property for hire" within the meaning of section 4272(a) of the Internal Revenue Code of 1954. Accordingly, amounts paid for the drayage services are subject to the tax on transportation of property imposed by section 4271(a) of the Code.

The text of the ruling reads as follows:

> "Advice has been requested whether the tax on transportation of property applies to payments made to a cotton warehouse for drayage services rendered under the circumstances described below.
>
> "The M company is engaged in the storage, compression, and handling of cotton. In the course of its business, M receives and unloads carloads of cotton for which it receives allowances from the railroads. Among the cars received are a few carloads of "mixed cotton," which means that a portion of the cotton is destined for other warehouses. Under a reciprocal agreement between M and other cotton warehouses, such cars are placed at the warehouse to which is consigned the greatest portion of the cotton. That warehouse unloads all the cotton, and loads that cotton consigned to other warehouses on drays and hauls it to the receiving warehouses. The receiving warehouse pays to the warehouse which performs the drayage a fixed drayage charge for each bale of cotton received.
>
> "Section 4271(a) of the Internal Revenue Code of 1954 imposes a tax upon the amount paid for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another. Section 4272(a) of the Code provides that the tax applies only to amounts paid to a person engaged in the business of transporting property for hire. Section 143.1(b) of Regulations 113, made applicable to the 1954 Code by Treasury Decision 6091, C.B.1954-2, 47, defines the term

"person engaged in the business of transporting property for hire" to include a common carrier, contract carrier, local moving or drayage concern, freight forwarder, express company or any other person transporting property for hire wholly or in part by rail, motor vehicle, water or air.

"On the basis of the facts stated above, it is held that since M's drayage of cotton consigned to other warehouses under the reciprocal agreement is not incidental to M's business of storing, compressing, and handling cotton, M is, to the extent that it performs the drayage of cotton to other warehouses, "a person engaged in the business of transporting property for hire" within the meaning of section 4272(a) of the Code. Accordingly, amounts paid to M for drayage services are subject to the tax on transportation of property imposed by section 4271(a) of the Code."

DISPOSITION OF UNDISTRIBUTABLE ACCOUNTS

Under new legislation recently passed in Kentucky, farmer cooperatives in that State will be able to remove from their books old accounts for undeliverable patronage refund allocations after a five-year period. This legislation was sponsored by the Kentucky Cooperative Council.

The full text of the legislation follows:

HOUSE BILL NO. 67

TUESDAY, FEBRUARY 4, 1958

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY:

Any agricultural cooperative organized or operated under provisions of Chapter 272 of the Kentucky Revised Statutes, or any agricultural cooperative association organized under the provisions of Chapter 271 of the Kentucky Revised Statutes and meeting the requirements of an agricultural cooperative as set forth in Chapter 57, Section 1, 42 U.S. Statutes, p. 388 (Title 7 Sec. 291, U.S.C.A.) or any cooperative corporation organized under Chapter 279 of Kentucky Revised Statutes may recover, after a period of five years, any unclaimed stocks, dividends, patronage refunds, or book equities for which the owner cannot be found and which are the result of distributable savings of the cooperative. The mailing of these stocks, dividends, patronage refunds, or book equities to the last known address of the indivudual involved as recorded on the records of the cooperative

shall be evidence of a bona fide attempt to deliver the same to the individual. When the notice to the individual of these amounts has been returned by the U.S.mail and the amounts have not been called for, after five years, the amounts involved may be placed in the income of the cooperative for the appropriate year and redistributed to the then current patrons.